

**Testimony Opposing SB 182  
to the Senate Committee on Agriculture and Natural Resources  
by Lane Letourneau, Program Manager  
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Good morning Chairman Kerschen and members of the committee. I am Lane Letourneau and I am the program manager for the Water Appropriation Program within the Kansas Department of Agriculture's Division of Water Resources (KDA). I appreciate the opportunity to provide testimony in opposition to Senate Bill 182.

Senate Bill 182 would effectively remove a water right owner's responsibility for the accuracy of their water meter if it has been repaired by a water measuring device technician and that technician places his or her seal upon the meter. When a meter is sealed it prevents anyone from opening or accessing the gears and register within the meter without breaking the seal. A seal does not prevent manipulation of impellers or guarantee proper installation. Water measuring device technician is broadly defined in this bill to include anyone that is in the "business of manufacturing, installing, examining, calibrating, testing, repairing, servicing or adjusting meters, gages," or other measuring devices. Due to the broad definition of a technician, anyone that places a seal on a meter is responsible for its accuracy, even if they have no part in the installation of the meter.

Providing immunity for water right owners appears unnecessary because in almost all cases of inaccurate meters, KDA issues a notice that the meter needs to be repaired prior to issuing any sort of penalty. Very few cases rise to the level of intentional non-compliance or tampering. For example, in 2017 there were only four instances where a penalty order had to be issued for a non-compliant meter and in 2018 there were only five instances. KDA's current approach appears to be effective and has not created undue burdens on the availability of technicians or in enforcement procedures against water right owners.

In situations that are severe enough to warrant formal enforcement action and the meter is sealed, any penalty or enforcement would have to be directed at the party that placed their seal on the meter. This could lead to increased costs for water right owners as anyone that is considered a technician is now

fully responsible for the accuracy of the meter and may insist upon allowing only technicians to perform installations in the field.

Another unintended consequence of this bill may be that because of the added responsibility, technicians may refuse to seal meters. This would require KDA to test all meter repairs in the field and then seal meters with a KDA seal. Even if technicians continue to seal meters, KDA believes that under this bill it would be necessary for the agency to test all newly or re-installed meters to ensure they are accurately measuring water in the field since the owner is no longer responsible for them. This is to ensure that unauthorized diversions of water are not occurring and to protect both the resource and neighboring water right owners' rights to use that resource. If the meters are not tested upon installation, then it becomes impossible to know afterward whether the technician or owner is at fault for an out of compliance meter. In these cases, it may be entirely unjust to take enforcement action against the technician, but that would be the only avenue left open by this bill. As outlined in our fiscal note, this will require a large increase in resources, including 4.5 new employees to assist with compliance checks.

Determining who actually took the action to alter a meter can be difficult to prove, especially if water right owners are only liable if KDA can prove they knowingly altered the meter or requested that it be altered. The right to withdraw water is a real property right and KDA has consistently held the owner of a water right responsible for the operation of that water right.

Further, the amendments contained to K.S.A. 82a-706c (Section 1 in SB 182) are unnecessary. The chief engineer has already promulgated regulations that set the specifications for water meters that can be used in Kansas, and the chief engineer already has sufficient statutory authority to adopt rules and regulations that cover all of the additions in this section of the bill.

This bill would make enforcement of the Kansas Water Appropriation Act more difficult for KDA, will increase the cost of undertaking such enforcement, and will likely increase the cost for meter repairs and likely decrease the availability of technicians that are willing to perform those repairs.

Thank you for your consideration. I will stand for questions at the appropriate time.